

Exhibit “B”

1

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2 Applestein v. Kleinhendler

3 2/16/21

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1 THE COURT REPORTER: Raise your right hand,
2 please.

3 Do you swear that the testimony you're
4 about to give will be the truth, the whole
5 truth, and nothing but the truth?

6 THE WITNESS: I do. Yes.

7 Thereupon:

8 ANDREA BIVENS, DVM,
9 having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. CIARDI:

13 Q. Ms. Bivens, my name is Albert Ciardi. I
14 represent the defendants.

15 Have you ever been deposed before --
16 putting aside remotely, but have you ever been
17 deposed before?

18 A. No.

19 Q. Okay. So I'm going to ask you a series of
20 questions, I'm going to need you to answer them. If
21 you don't understand my question at any point in
22 time, please stop and ask me to rephrase, break it
23 up, whatever makes it so that you can understand my
24 question.

25 If you answer my question, I'm going to

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3

1 assume that you understood it and are answering to
2 the best of your ability. Okay?

3 A. Yes.

4 Q. One of the other things, obviously all your
5 answers have to be verbal, and they need to be more
6 than just some sort of a nod or a, you know, an
7 uh-huh or something like that.

8 To the extent there's an exhibit, I think

9 they've gone over Exhibit Share with you. I will
10 put the exhibit into the -- on to the screen. It'll
11 show up on your other screen or however you're
12 seeing the exhibits. You'll be able to freely move
13 through it as I do, but I may point you to certain
14 parts. If at any point in time you have a question
15 or you can't get to it read it, see it, just let us
16 know so that we can take a break and work through
17 that. Okay?

18 A. Yes.

19 Q. If you -- I'm going to do my best to not
20 speak over you. If you don't interrupt me, we should
21 get a good record. Your lawyer may have, at points
22 in time, make objections. Do not answer. Just wait
23 until he either says, "You can answer" or "We move on
24 past that," but wait before you answer for one of us
25 to tell you what you should or shouldn't do at that

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4

1 point if there's an objection. Okay?

2 A. Okay.

3 Q. Okay.

4 Are you under or have you taken any
5 medication today or have any other issues that would
6 prevent you from being able to testify truthfully or
7 accurately?

8 A. No.

9 Q. Okay.

10 All right. So you -- do you -- do you
11 know why you are here today?

12 A. Yes.

13 Q. Okay. Why do you think you are here today?

14 A. I am here for you to get my answers to your
15 questions about what happened between Howard
16 Kleinhendler and my father.

17 Q. Okay. Did you receive a notice of
18 deposition?

19 A. I did.

20 Q. Okay. And did you -- did you review it
21 when you received it?

22 A. I did.

23 Q. Okay.

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37

1 Is it your position, and I'm not asking you as a
2 doctor, I'm asking you as a daughter, that your
3 father was incapable of making decisions in 2017 to
4 manage his affairs?

5 A. In 2017, yes.

6 Q. Okay.

7 A. I am a veterinarian, I'm not a physician,
8 just so you know. So you don't have to preface that.
9 I don't actually treat people.

10 Q. No, no, no, I ask you with that because
11 it's -- I'm not asking for your expert opinion,
12 Andrea. I'm asking for what you observed?

13 A. Right. I'm saying, my opinion, if it came
14 to human health, would not be expert regardless if I
15 --

16 MR. VIDAL: I think he's more worried about
17 me objecting to --

18 MR. CIARDI: I'm worried about Tom
19 objecting. We're not in the same room so I'm

20 not worried about you hitting me, Andrea. I'm

21 just worried about Tom objecting.

22 Okay. I'm going to try and mark an

23 exhibit. See if this works. Exhibit number --

24 this will be Exhibit 15.

25 We are out of order.

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38

1 What am I using? Defendant, right? I

2 think that's what I used.

3 MR. VIDAL: Is this Exhibit 15 carrying on

4 from --

5 MR. CIARDI: No, I'm going to put the name

6 on this one, Biven, if I get it right.

7 If I use a separate color, does it matter,

8 Tom?

9 MR. VIDAL: I don't think it matters.

10 MR. CIARDI: Okay.

11 BY MR. CIARDI:

12 Q. Okay. Andrea, you may have to refresh your

13 screen, at least that's what we learned last time in

14 order to view the exhibit.

15 MR. VIDAL: It just came up for me.

16 A. Okay, and there's a PDF.

17 BY MR. CIARDI:

18 Q. It's a three-page document.

19 A. Okay.

20 Q. I'm going to ask you.

21 A. I have to cover up your face to do it.

22 Q. Okay. My face is not that important in

23 this deposition. So if you-- take whatever time.

24 All I want you to do right now is just look at it

25 briefly and when you've done that, let me know and

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39

1 I'll have some questions.

2 A. It's so little. Maybe this preceded that

3 phone call, that second phone call, that I didn't

4 know the date.

5 Q. Okay.

6 A. Because -- hang on a second, I have seen

7 that.

8 Am I supposed to wait for you to ask me a
9 question?

10 MR. VIDAL: Your lawyer usually likes it
11 better when counsel asks a question first.

12 MR. CIARDI: And Tom, would appreciate it
13 best. But I mean --

14 BY MR. CIARDI:

15 Q. Andrea, my first question is very simple:
16 Have you seen this before?

17 A. I have. I want to still read it again,
18 hang on a second, though.

19 Q. Okay.

20 A. No, I did see that, and that's after that
21 conversation -- okay, you can ask me questions.

22 Wait, I want to see you. Okay.

23 Q. It's a two-page document. Ignoring the
24 cover page, of course.

25 A. Then, no, I got a cover page and then one

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40

1 handwritten page. Did I miss something?

2 Q. There should be an intermediate email.

3 A. I have a blank page and then I have a page

4 that says, like, Andrea, blah, blah, blah, Betz, and

5 then a handwritten page that's the agreement.

6 Q. Right. Three pages.

7 A. And one of them is blank?

8 Q. Yes, the first page is blank.

9 A. I'm sorry?

10 Q. The first page should be blank and it's got

11 a sticker at the top, right corner?

12 A. I got that.

13 Q. Okay. All right.

14 The second page, this is what appears to

15 be an email that was sent in July of 2016 regarding

16 the notes that were presented earlier. Do you see

17 that?

18 A. Yes, sorry.

19 Q. Why did you -- do you know why you were

20 sent this by Betz? And I'm not asking you to look

21 into her mind -- I'm just saying, did she express to

22 you, "I'm sending this to you." Did you ask for

(40 cont)

23 updates? How did this get to you?

24 A. I would have to take my best guess, like,

25 based on the circumstances then which is, there was

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41

1 that other conversation where he had said we were

2 going to get those empty shares and I was not happy

3 about it. So I think this -- my guess is this was

4 that answer where it says, "No, we're getting a

5 lien," and he had said something about, there was

6 some kind of thing that Howard had said that, "Well,

7 we won't sell off the golf course and we'll hang on

8 to some of the property for you to have, like the" --

9 we had some real estate, we had a -- like a -- like a

10 mortgage, you know.

11 So I think this was her presenting me with

12 their answer to my concerns.

13 Q. Okay.

14 A. That is my best guess.

15 Q. All right. So when you got this, what did

16 you do with it, if anything?

17 A. I don't think I did anything with it.

18 Q. Okay. Did you --

19 A. It wasn't a question, was it? This is what

20 your father has agreed to.

21 Q. Okay. When you got this email and these

22 terms, did you -- did you speak to your father about

23 it at all?

24 A. I cannot speak to my father because he

25 doesn't want to speak.

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42

1 Q. Okay. So the only way to communicate with

2 your father then would have been in person or by

3 email or in person?

4 A. I wish we could video, like, my father so

5 that you -- or even back then that you would have an

6 understanding of -- you talk to my father, he just

7 looks at you like this and then just walks out of the

8 room. I don't --

9 So I'm pretty sure I did nothing about it.

10 It sounded like a done deal. And as long as there

11 was a lien on the property, I don't think that I had
12 an objection to there being a lien on the property
13 in my father's favor as long as my father was
14 protected.

15 Q. Okay. Did you reach out to Mr. Dohan about
16 this?

17 A. No. I was not running the show at that
18 point. Dohan and Betz and Howard I think were
19 communicating. Betz was doing, like, the paperworky
20 stuff, Steve was doing the accounting stuff, and
21 Howard was doing the business deal stuff.

22 Q. Okay.

23 Did you raise any concerns with either of
24 them when you got this that you didn't think your
25 father could -- would understand what he was

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43

1 agreeing to?

2 A. No. The -- I agreed -- I think that the
3 property -- if it were up to me. I've been careful
4 about not standing in the way of the sale of the

5 property because I would have never wanted -- I think
6 a thousand acres of anything should stay native. I
7 know my father wanted to sell the property. If he
8 had a secure lien on the property, then I felt like I
9 should shut up and let him sell his property because
10 it was not my property, and that my natural
11 tree-hugger instincts should shut up and mind its own
12 business.

13 But I -- "AA retained liens on the shares
14 and will not sell the golf course land without his
15 consent or by paying off the 7 million."

16 So it sounded to me like if that is --
17 unless that's not saying a lien.

18 I don't -- I don't honestly know it at
19 what point.

20 Q. Let me rephrase it. Did you have --

21 A. He --

22 Q. I think you've answered the question,
23 Andrea. And if you want to keep talking you can, but
24 I think Tom's going to have a problem with this.

25 A. I have seen it. I don't . . .

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44

1 Q. Okay. Assuming you didn't have any
2 conversations with Steve about it, did you and Betz
3 have any conversations between --

4 A. I don't recall.

5 Q. -- her giving you this and the closing or
6 that call before the closing?

7 A. I do not recall. I'm sure I had
8 conversations with her between July 2016 and
9 April 2017. Is that the question?

10 Q. Let's -- why don't -- let me rephrase the
11 question. Between this email and that phone call
12 before the closing, did you have any other calls with
13 Betz regarding the Fones Cliffs property? Let's just
14 limit it to that topic.

15 A. I don't honestly recall. This was not
16 something that -- outside of those few conversations,
17 I had very little to do with this until this
18 bankruptcy happened.

19 Q. Okay.

20 A. This was not -- my father's affairs were

21 not a day-to-day Andrea part of life until now. So

22 it was not my thing.

23 Q. Okay. And until then it became your thing

24 in 2018, who did you think was managing his life, or

25 who do you think was doing what you're doing now?

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45

1 A. I thought that I got very lucky in that my

2 father hired people who, for whatever reason, had

3 this undying loyalty to him and changed their lives

4 to meet his needs. I thought that Betz

5 metamorphosized herself from administrative assistant

6 to a life manager, and that Boony turned himself from

7 a housekeeper into a CNA, and Antonio from a driver.

8 And I told anyone who asked, "I was the luckiest

9 person in the world that my father, who lives in what

10 was supposed to be this snobby, condo thing in

11 Aventura, turned his life into this assisted living

12 facility and everything worked out." Yep. That is

13 exactly what it was and that is exactly what it has

14 been, and it is exactly what it is still.

15 Q. And during this period of time -- and what
16 did you understand Mr. Dohan's role to be as it
17 relates to your father's business interest?

18 A. He is an overpaid accountant. Still today.
19 He is still an overpaid accountant.

20 Q. Okay. All right. So now I'm going to
21 close out of this exhibit.

22 A. Am I allowed to ask you a question during a
23 deposition?

24 Q. It depends on what it is. Not really, but
25 I will let Tom decide that. If -- you can ask a

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46

1 question. I don't know if I'll be able to help you,
2 though, with it, Andrea.

3 A. Okay. Because I am kind of curious with
4 this Exhibit 15. Do you know the date of the phone
5 call that I don't know the date of?

6 Q. I don't know that we do know that.

7 MR. CIARDI: Tom, do we?

8 MR. VIDAL: I think that's the correct

9 answer. I don't know exactly --

10 BY MR. CIARDI:

11 Q. Andrea, I am not -- and let me correct

12 that. This isn't a memory game. I'm not going to

13 ask you -- I'm not -- this isn't like -- I'm not

14 trying to play gotcha here. When we get to court,

15 another story, but --

16 A. I'm not asking for a spot --

17 Q. I am looking for information now, and if

18 you know it, you don't know it, I will try to give

19 you dates. I just don't know the date of that call.

20 A. I'm not asking because of that. I'm asking

21 because I'm not sure if this is what generated the

22 phone call or if . . . You know what I mean? Like I

23 don't -- I would be interested if I -- you know, I

24 had like a magic crystal ball that I could see where

25 are those two -- which came first, the call or the --

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47

1 but I don't remember, so . . .

2 Q. Unfortunately, I don't think any of us know

3 that information.

4 A. I thought maybe you did.

5 Q. No. So I have just introduced another

6 exhibit. This is Exhibit 6.

7 (Thereupon, marked as Exhibit .)

8 BY MR. CIARDI:

9 Q. And if you could just take a look at it.

10 It's, again, a two-page document with one of them

11 being a cover page.

12 MR. VIDAL: This came across to me. I got

13 it.

14 BY MR. CIARDI:

15 Q. You may have to refresh, Andrea, if it's

16 not coming through.

17 A. I did. Okay.

18 Q. Okay. Do you remember or do you have any

19 recollection of your father resigning from something

20 and you accepting being the successor of something?

21 A. Yeah, we had to sign those resignations and

22 everything in order to hire Venable.

23 Q. Okay. When -- were you present when your

24 father signed his resignation?

25 A. No.

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48

1 Q. Do you know who was present?

2 A. Probably Betz.

3 Q. Okay. In -- this looks like this occurred

4 in 2019. Did your father know what he was signing?

5 And again, not looking for your medical opinion, but,

6 again, as his daughter, I think you've expressed that

7 you didn't think he was able to do certain things in

8 the past. I'm wondering in 2019, if you thought he

9 knew what he was signing?

10 A. I think we were late in getting him to sign

11 it.

12 Q. So you -- you do not think you knew what he

13 was signing?

14 A. I don't know if he knew what he was

15 signing.

16 Q. Did you express any of those concerns to

17 Marian Hasty at that point in time, that your father

18 may not know what he is signing or doing?

19 A. No, I did not.

20 So I am going to ask you another question.

21 Even though I'm not allowed to ask you questions.

22 But if this is the avenue that you heading down,

23 you're going to be feeding my father to the wolves

24 if this is what you're going after is the people

25 that are protecting my father, then you're handing

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49

1 him over to the maniac who is being sued by the

2 federal government and this -- this is not a good

3 way to -- this is -- this is not the moral path that

4 you should be on.

5 Q. Andrea, I have no idea what -- who you're

6 referring to.

7 A. You know who I'm referring. You do know

8 who I'm referring to. And this -- this is -- this

9 is -- this -- this was us -- the only way that we

10 could go and protect my father's interest and hire a

11 lawyer because I cannot hire a lawyer because my



12 father could not speak, is to -- the only way I could
13 execute the documents that my father was told by his
14 psychiatrist, that he had drawn up, that I hadn't
15 gone and pushed for earlier, is that we finally went
16 ahead and executed that --

17 Q. If you're done your answer, I'm going to
18 suggest that we take a three-minute break.

19 MR. CIARDI: And, Tom, you and Andrea may
20 need to chat.

21 MR. VIDAL: Yes. Thank you very much.

22 MR. CIARDI: Let's go off the record, if
23 you don't mind for like five minutes, Tom. Is
24 that enough?

25 MR. VIDAL: That's fine. Going off the

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50

1 video now.

2 (Recess was held from 3:09 a.m. until 3:12 a.m.)

3 BY MR. CIARDI:

4 Q. Andrea, we're back on the record.

5 If you would take a look at Defendant's

6 Exhibit 7 which should now be up on the screen.

7 And after you have had a chance to look at

8 it let me know when we can discuss it.

9 A. Okay.

10 Q. Exhibit 7 is one email dated July 3rd of

11 2019, another dated March 25th and a third dated

12 March 25th as well.

13 Do you see those three emails?

14 A. Yes.

15 Q. Starting with the one at the end,

16 March 25th, can you tell me what the purpose of the

17 resignation and the acceptance was -- and, again, I'm

18 not looking for you to give me a legal opinion, but

19 what you anticipated was happening as -- in whatever

20 role you were accepting in this transaction?

21 A. I was accepting the trusteeship for -- of

22 my father. This is for his personal trust. There

23 was a couple things going on right then, one was

24 power of attorney. The other is, all of his accounts

25 at Northern Trust were receiving no interest

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1 whatsoever, and we were moving them to Centennial,
2 and we couldn't do that without a resignation of
3 trustee. So it was for those two reasons: Changing
4 the banks and the attorneys wanted them.

5 Q. Okay. The email right before that is
6 another March 25th one from Marian Hasty to you and
7 Mr. Dohan. Which has a series of attachments which
8 are not attached. Okay?

9 A. Okay.

10 Q. What was the -- what generated Marian Hasty
11 sending this email? What caused that to happen?

12 A. I think it was in response to when I
13 started hiring the attorneys my father became time
14 consuming whereas before, like I told you, I didn't
15 spend a lot of daddy time, it wasn't a big part of my
16 life. And I've asked her, I said, "I understand I'm
17 the healthcare surrogate, but given the fact that I
18 seem to be disowned, can you tell me if I'm still
19 disowned because this is taking a lot of my time."

20 And so I asked her where -- "What is the
21 situation?" Because I had never seen the estate

22 planning documents other than what I was sent to me

23 was the part that was important that I know which

24 was I had to be shown the healthcare surrogate

25 because for the feeding tube. I had to allow a

ROUGH DRAFT - NOT A CERTIFIED TRANSCRIPT

52

1 feeding tube, but I had never seen whether or not I

2 remained disowned.

3 And I thought, you know, I'm doing this

4 stuff because it's the right thing to do. But if I

5 have been disowned, it's taking a lot of time. So I

6 asked her what is the thing, are my sisters and I

7 still disowned?

8 Q. Okay. And so that was the response to

9 this? These two emails seemed to have worked

10 together. One is giving you the information and the

11 other is the resignation.

12 Would that be correct?

13 A. No. They -- all of this stuff happened --

14 the resignation was part of the stuff that was time

15 consuming that would have generated the question

16 like -- if you knew the number of hours I'm spending
17 on this, it, you know -- it's a lot of time I'm
18 spending on it for -- so I asked that question.

19 Q. Okay.

20 A. The resignation wasn't -- it's not -- it's
21 the opposite order of what I think you probably
22 think. The resignation was part of all this time
23 consuming stuff, changing the banks, changing the
24 lawyers, doing all this stuff to try to get my dad's
25 messes cleaned up. And then I asked the question,

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53

1 like, you know, what is going on with all of his
2 estate stuff.

3 Q. Okay. So when -- were you -- you were not
4 present when your father signed the document. I
5 think we already discussed that, correct? Or you
6 were?

7 A. No, it's not, but I actually have a video I
8 think if I dug through my email. I think she videoed
9 it and I think she actually asked him a question:

10 "Do you understand what you're signing?" And I think
11 she was there, and I think -- I have to look for it,
12 but I am 95 percent certain that there is a video of
13 him signing that resignation of trustee.

14 Q. Okay.

15 MR. CIARDI: Tom, I don't think we have it,
16 so . . .

17 MR. VIDAL: I have not seen it either.

18 THE WITNESS: Well, it wasn't something you
19 asked for. You asked for medical stuff and
20 stuff relevant to Virginia.

21 MR. CIARDI: We'll let Tom deal with that
22 with you, Andrea. I'm not fighting with you,
23 I'm just saying I haven't seen it.

24 MR. VIDAL: I think it's fine. If it
25 exists, then I think we should --

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54

1 THE WITNESS: I will -- when we finish --
2 you don't want me to look for it now?

3 MR. CIARDI: No, I don't want you to look

4 for it now.

5 THE WITNESS: I will find for you later and
6 send it to Tom. Is that what you want me to do?

7 MR. CIARDI: Yes. If you could do that,
8 that would be great.

9 BY MR. CIARDI:

10 Q. Okay. Why, again, is there a separate
11 email in July with -- with other changes and a
12 different resignation with regard to the trust?

13 A. Because we didn't understand when we did
14 it -- they made us do, like okay, for this account --
15 we did not get -- or at least I did not get -- we had
16 to do, like, the resignation of trust for DCA grantor
17 trust, we had to do a resignation of trust for the
18 AHA trust. We had to do a thing for a -- there were
19 a whole bunch of different resignations for
20 different -- and we didn't realize it, and so they
21 all got -- they didn't all get done at the same time,
22 they got done like, you know, we went to close this
23 account and move it to this bank. And then we went
24 to close this account, and they were, like, "You

25 don't have the resignation."

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55

1 We were like, "We just did that," and it

2 was a different form for that account.

3 Q. Okay. When they were signed, the only

4 person there would have been Betz, would that be

5 accurate, Andrea?

6 Either Betz, Boony or Antonio?

7 A. When they were signed by my father?

8 Q. Father, yes.

9 A. Yes.

10 Q. Okay.

11 A. Because it would have been in Miami. We

12 wouldn't have moved him.

13 Q. And I don't think this matters to the case

14 now, but is he still at his residence in Aventura?

15 A. Uh-huh.

16 Q. Okay. All right.

17 That's it for that one.

18 A. Sorry. That should have been a yes.